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Supreme Court of the United States

OCTOBER TERM, 1941.

No. .....

DOMINIC GALEOTA

vs.

UNITED STATES GYPSUM COMPANY,
Petitioner.

Petition for Writ of Certiorari to the United States Circuit Court of Appeals, Second Circuit

TO THE SUPREME COURT OF THE UNITED STATES:

The petition of the United States Gypsum Company for a writ of certiorari to review the decision of the United States Circuit Court of Appeals, Second Circuit, rendered December 8, 1941, affirming a judgment in favor of the plaintiff entered in the United States District Court for the Western District of New York on March 26, 1941, which judgment was for $8,305.08 damages and costs, respectfully shows:

SUMMARY AND SHORT STATEMENT OF MATTER INVOLVED

This is a common law personal injury action. The plaintiff claimed to have sustained a condition of his lungs known as silicosis, as a result of exposure to alleged harmful dust while working for the defendant in its gypsum

mine and limestone quarry at Oakfield, New York, between November 10, 1930, and February 28, 1931, in the gypsum mine, and in the limestone quarry for six and a half weeks in the spring of 1931, and for one week in the spring of 1933. The judgment of the United States District Court, Western District of New York, was for the plaintiff in the sum of $8,305.08. The decision of the United States Circuit Court of Appeals, Second Circuit, affirmed that judgment.

The matters here involved are:

(1) Whether in a common law negligence action brought by defendant's employee for personal injuries alleged to have been sustained by reason of exposure to harmful dusts present in the place of work, the plaintiff may succeed without establishing as an independent fact that such dusts as may have been present were harmful and injurious to human beings, and were in fact present in such quantities as to produce harm to plaintiff; and

(2) Whether plaintiff is entitled to succeed, he having stated that he knew while working that the conditions under which he worked made him sick.

BASIS OF JURISDICTION

This Court has jurisdiction of this petition by virtue of the provisions of Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

THE QUESTIONS PRESENTED

The questions here presented are:

(1) Whether the plaintiff was required to and did establish as an independent fact that he was exposed to a harmful and injurious dust in sufficient quantities to have caused harm generally to human beings and particularly to himself; and

(2) Whether the plaintiff was guilty of contributory negligence or assumed the risk of his employment as a matter of law.

THE REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT

The plaintiff failed to offer any evidence showing

(1) The content or nature of the dust present in the place of work;

(2) The amount of such dust present;

(3) That the dust in fact contained a harmful substance or substances; and

(4) That if any harmful substance was present, it was present in sufficient quantity to cause injury to the plaintiff.

The plaintiff was guilty of contributory negligence or assumed the risk of his employment as a matter of law, since he stated that the conditions under which he worked made him sick, and knowing that fact, he still continued to work.

The decision of the Circuit Court of Appeals has so far departed from the accepted and usual course of judicial procedure, and has sanctioned such departure by the District Court, so as to require an exercise of this Court's power of supervision. To accept the Circuit Court's position is to say that plaintiffs in negligence cases, of which this case is typical, may be relieved of the necessity of establishing the essential elements of their cause of action.

WHEREFORE, your petitioner respectfully prays that a writ of certiorari may be issued out of this Honorable Court directed to United States Circuit Court of Appeals, Second Circuit, commanding such Court to certify and send to the Supreme Court a transcript of the record of the proceedings in said United States Circuit Court of

Appeals, Second Circuit, in the above matter, for its review and determination, pursuant to the provisions of law applicable thereto, to the end that said decision of said Circuit Court of Appeals may be reviewed by this Honorable Court, and that your petitioner may have such other and further relief or remedy in the premises as to this Honorable Court may seem just and proper.

Respectfully submitted,

T. CARL NIXON,
Attorney for the Petitioner.

Dated: January 19, 1942.